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In re Application of
HAGHIRI, et al.
Application No.: 09/926,011
PCT No.: PCT/EP00/01273
Int. Filing Date: 16 February 2000
Priority Date: 17 February 1999
Attorney Docket No.: HAGH3003/JEK
For: PORTABLE DATA SUPPORT WITH A
REMOVABLE MINI CHIP CARD

COMMUNICATION

The above-identified application is before the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371.

BACKGROUND

On 16 February 2000, applicant filed the international application, which claimed a priority date of 17 February 1999. A Demand for international preliminary examination in which the United States was elected was filed prior to the expiration of 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 August 2001.

On 14 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by the requisite basic national fee; a translation of the International Application into English; a First Preliminary Amendment; a sheet of formal drawings and an unexecuted oath or declaration of the inventors.

On 20 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and a Notification of Defective Oath or Declaration (Form PCT/DO/EO/917) requiring an oath or declaration in compliance with 37 CFR 1.492(a) and (b). Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 06 March 2002, applicant filed a response which included a check in the amount of \$1610.00 (\$40.00 assignment recording fee, \$130.00 surcharge for providing an oath or declaration later than thirty months from the priority date and \$1440.00 as payment for a four-

month extension of time); a petition for a four-month extension of time and a declaration/power of attorney executed by joint inventor Renee-Lucia BARAK as well as Toubha HAGHIRI, Szahara HAGHIRI, Mana HAGHIRI as heirs of the deceased joint inventor Yahya HAGHIRI. In addition, Toubha HAGHIRI executed the declaration as the parent of minor heir Sina HAGHIRI.

On 27 March 2002, applicant was mailed a Notification Of Acceptance of Application (Form PCT/DO/EO/903).

DISCUSSION

Pursuant to 37 CFR 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

The declaration filed 06 March 2002 was executed by Toubha HAGHIRI, Szahara HAGHIRI and Mana HAGHIRI as heirs of the deceased inventor, Yahya HAGHIRI. However, neither the declaration nor the transmittal letter declared that they are all the heirs of the deceased. Thus, there may be other heirs who are required to sign the declaration. Therefore, the declaration was not in compliance with 37 CFR 1.497. Applicant is required to file a statement either from the heirs themselves or applicant's counsel setting forth that the individuals listed above represent all of the heirs of the deceased inventor, Yahya HAGHIRI. In addition, said statement should set forth that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. Lastly, the declaration is not in compliance with 37 CFR 1.497 (a)-(b) in that it is unclear whether the declaration is setting forth the residence, post office address and country of citizenship of Yahya HAGHIRI or the heirs as required under 37 CFR 1.497(b). The information must be provided for both the deceased joint inventor, Yahya HAGHIRI and the surviving heirs.

CONCLUSION

The Notification Of Acceptance of Application (Form PCT/DO/EO/903) mailed 27 March 2002 is hereby **VACATED**.

Applicants are hereby afforded TWO (2) MONTHS from the mail date of this decision to file an oath or declaration in compliance with 37 CFR 1.497 (a)-(b). Any reconsideration request should include a cover letter entitled, "Petition Under 37 CFR 1.42." No petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).